



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,819	01/28/2000	Naoki Shibata	PM 266204	2698

7590 07/21/2003

MCGINN & GIBBS, PLLC  
8321 OLD COURTHOUSE ROAD  
SUITE200  
VIENNA, VA 22182-3817

EXAMINER

WILLE, DOUGLAS A

ART UNIT	PAPER NUMBER
	2814

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .	Applicant(s)
09/493,819	SHIBATA, NAOKI
Examiner	Art Unit
Douglas A Wille	2814

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 29 May 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 1,3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,5-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \*    c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 6 refers to "said second layer" (last line). Does this mean the intervening layer?

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan.

6. With respect to claim 1, Edmond et al. show a group III nitride light emitter (see cover Figure and column 4, line 57 et seq.) with a substrate 21, a buffer layer 23 directly on the substrate, a heterostructure layer 27, directly on the buffer, which can be  $A_xB_{1-x}N$  (column 5, line 48) where A and B are Group II elements and x, y can range from 0 – 1 inclusive. Also shown is an active layer 25, directly on the heterostructure layer of  $A_xB_{1-x}N$  (column 5, line 48). Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the interface strain and minimize dislocations (see abstract) and shows that graded layers can be

provided only between the clad layers and the active layers (column 7, line 64). It would have been obvious to include the graded layers shown by Duggan for the advantage shown.

7. With respect to claim 7, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22), which could be GaN.

8. Claims 3, 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmond et al. in view of Duggan and further in view of Nitta et al.

9. With respect to claim 3, Nitta et al. show a blue light emitter (see Figure 1 and column 2, line 62 et seq.) where the active layer 104 can be InGaN (column 3, line 43) and the clad layer 103 can be InAlGaN (column 3, line 33). Note that the wavelength of the emitted light can be adjusted by varying the compound (column 3, line 52) and it would be obvious to vary the composition of the clad layer to provide sufficient optical confinement and to use a compound with Al to increase the wavelength range available.

10. With respect to claims 5 and 6, Duggan shows that for III-nitride devices the addition of a graded layer can be used to reduce the interface strain and minimize dislocations (see abstract) and shows that graded layers can be provided only between the clad layers and the active layers (column 7, line 64). It would have been obvious to include the graded layers shown by Duggan for the advantage shown.

11. With respect to claim 8, Edmond et al. show a buffer layer of  $A_xB_{1-x}N$  (column 5, line 22) which could be GaN.

Art Unit: 2814

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (703) 308-4949. The examiner can normally be reached on M-F (6:15-2:45).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (703) 308-4918. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Douglas A. Wille  
Primary Examiner

July 15, 2003